

**REMARKS**

With this amendment, Applicant adds claim 11. Claims 1-11 are all the claims pending in the application.

**I. Formalities**

Applicant thanks the Examiner for acknowledging Applicant's claim for foreign priority under 35 U.S.C. § 119 and for confirming receipt of the certified copy of the priority document.

Applicant thanks the Examiner for signing and returning copies of the forms PTO-1449 submitted with the Information Disclosure Statements filed on April 9 and August 4, 2004. However, the Examiner did not consider reference JP 2001-107642 because there was no English translation of the reference or Abstract. The Examiner also did not consider US patent No. 6,092,336 issued to Wright *et al.* because of a typographical error on form PTO/SB/08, which lists the patent no. as 6,092,236.

Applicant has enclosed another copy of these references and requests that the Examiner consider these references and return signed copies of enclosed forms PTO/SB/08.

**II. Claim Rejections - 35 U.S.C. § 102**

The Examiner has rejected claims 1 and 10 under 35 U.S.C. § 102(b) as being anticipated by Hellinga *et al.* (US 5,982,126) ["Hellinga"]. For at least the following reasons, Applicant traverses the rejection.

As an aid in understanding, Applicant submits that, in a non-limiting embodiment of the present invention, the position of the back door is monitored by determining the number of times the clutch is turned on and off when the back door is in the full-open position after the power to the open/close driving section has been turned off. This provides a safety check of the operation of the holder (gas stay) that holds the back door at the full-open position. In contrast, Hellinga merely relates to checking for an obstruction in the path of the door.

Turning to the specifics of the claim language, claim 1 recites a routine for controlling a power pivot door that comprises “judging that the holder [for holding the door at the full-open position] fails to operate when the frequency of the engaged condition of the clutch indicates a predetermined frequency.” The Examiner contends that col. 10, lines 9-23, of Hellinga discloses this feature. Specifically, the Examiner contends that this feature is disclosed when “the force with respect to time is larger.” Office Action at page 3.

Hellinga relates to the detection of an obstruction in a power closure panel (door panel) (See Abstract). As the door is operated, the system determines an obstruction by sensing the present force and the present derivative of the force with respect to time. A check is made to determine whether the present force is larger than a stored (expected) force for the current position of the door and whether the present force is larger than a maximum force. In addition, a check is made to see if the present derivative of the force is larger than a stored derivative of the force. These checks determine if there is an obstruction in the path of the door as it operates. See Col. 10, lines 9-23.

Applicant submits that merely checking for an obstruction in the path of the door does not correspond to judging whether the holder for holding the door at the full open position has failed to operate. Because the clutch of the motor is disengaged when the door is full open (see Fig. 6, items 10 and 11), checking for an obstruction, which looks at the force exerted by the motor on the door (col. 10, lines 9-23), does not provide any information when the door is in the full-open position. Accordingly, the obstruction checks of Hellinga cannot provide a judgment as to whether the device for holding the door open has failed.

Therefore, Hellinga does not disclose or suggest at least the claimed judging as set forth in claim 1.

Claim 10 recites a system for detecting an abnormal condition of the gas stay comprising a control unit for “judging that the gas stay [that can hold the door at the full-open position when it is in a normal condition] is in an abnormal condition when the counted frequency indicates a predetermined frequency.”

Because this feature is similar to that given above with respect to claim 1, Applicant submits that claim 10 is patentable for at least reasons similar to those given above with respect to claim 1.

### **III. Allowable Subject Matter**

Applicant thanks the Examiner for finding allowable subject matter in claims 2-9 and for indicating that claims 2-9 would be allowable if rewritten in independent form.

Applicant holds rewriting these claims in abeyance until the subject matter regarding their base claim is resolved.

**IV. New Claim**

With this amendment, Applicant adds claim 11. Applicant submits that at least the claimed control unit is not disclosed or suggested by Hellinga.

**V. Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

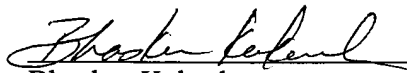
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